

SEWARD & KISSEL LLP

ONE BATTERY PARK PLAZA
NEW YORK, NEW YORK 10004

BRUCE G. PAULSEN
PARTNER
(212) 574-1533
paulsen@sewkis.com

TELEPHONE: (212) 574-1200
FACSIMILE: (212) 480-8421
WWW.SEWKIS.COM

901 K STREET, NW
WASHINGTON, DC 20001
TELEPHONE: (202) 737-8833
FACSIMILE: (202) 737-5184

November 9, 2018

VIA ECF AND EMAIL

Hon. Andrew L. Carter, Jr.
United States District Court
Southern District of New York
40 Foley Square, Room 435
New York, NY 10007
(ALCarterNYSDChambers@nysd.uscourts.gov)

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Re: *Commodities & Minerals Enterprise Ltd. v. CVG
Ferrominera Orinoco, C.A.*, No.16-cv-861;
Update to Parties' March 27, 2018 Joint Status Report and
Request for Pre-Motion Conference

Dear Judge Carter:

We write on behalf of Plaintiff Commodities & Minerals Enterprise Ltd. ("CME") to (i) update the Court on the status of a related proceeding in the United States District Court for the Southern District of Florida (Case No. 1:17-cv-20196-JEM), in which the Florida district court confirmed an arbitration panel's partial final award dated January 5, 2017 (the "Partial Final Award"), and (ii) request a pre-motion conference regarding CME's anticipated motion to lift the stay in this case to effectuate CME's enforcement of the Partial Final Award, which has been reduced to a final, non-appealable judgment as a result of the Florida district court's decision and registered in this district. *See Commodities & Minerals Enterprise Ltd. v. CVG Ferrominera Orinoco, C.A.*, 18-mc-00511 (S.D.N.Y. filed Nov. 7, 2018).

By way of background, the Partial Final Award directed defendant CVG Ferrominera Orinoco, C.A. ("FMO") to post security in the amount of \$62,730,279.98 into an escrow account, pending a final ruling of the arbitration panel in that proceeding. As set forth in the parties' March 27, 2018 Joint Status Report (ECF No. 105), (1) on January 17, 2017, CME filed a petition to confirm and enforce the Partial Final Award in the United States District Court for the Southern District of Florida; (2) on April 5, 2017, FMO moved to vacate the Partial Final Award, which motion was fully briefed by May 8, 2017; and (3) as of March 27, 2018, the Florida district court had not yet ruled on CME's petition to confirm the Partial Final Award or FMO's motion to vacate filed in that proceeding. *See* ECF No. 105 ¶¶ 3-4, 8. The parties further

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requested that the stay remain in place pending a decision by the Florida district court on CME's petition to confirm the Partial Final Award and FMO's motion to vacate. *Id.* ¶ 9.

On July 18, 2018, the Florida district court ordered and adjudged that CME's motion should be granted, and confirmed the Partial Final Award (the "Florida Judgment"). The Court also denied FMO's motion to vacate same. A copy of the Florida Judgment is attached as Exhibit A.

On August 16, 2018, FMO filed a notice of appeal to the Eleventh Circuit Court of Appeals, but did not seek a stay of the Florida Judgment pending appeal. FMO subsequently abandoned its appellate rights in moving to voluntarily withdraw its appeal. On October 25, 2018, the Eleventh Circuit Court of Appeals granted FMO's motion and entered an order dismissing the appeal, a copy of which is attached as Exhibit B.

As a result of the foregoing, the Florida Judgment constitutes a final, non-appealable judgment, and CME is entitled to all rights afforded to a judgment creditor under federal law and the law of any state in which the judgment is registered. On November 7, 2018, CME commenced a miscellaneous action in this Court and registered the Florida Judgment in the Southern District of New York, a copy of which is attached as Exhibit C.

Accordingly, CME respectfully requests a pre-motion conference regarding CME's anticipated motion to lift the stay in order to enforce the Florida Judgment by, among other things, seeking a turnover of all funds attached in connection with this proceeding, pursuant to the Florida Judgment, into the escrow account established pursuant to the Partial Final Award.¹

Respectfully submitted,

SEWARD & KISSEL LLP

By: /s/ Bruce G. Paulsen

Bruce G. Paulsen

Brian P. Maloney

Michael B. Weitman

Laura E. Miller

One Battery Park Plaza

New York, New York 10004

Tel. (212) 574-1200

Fax: (212) 480-8421

paulsen@sewkis.com

¹ With the entry of the Florida Judgment, among other reasons, FMO may no longer argue that its property is immune from attachment under the Foreign Sovereign Immunities Act. *See* 28 U.S.C. § 1610(a)(6) (property of a foreign state used for commercial activity in the United States not immune from attachment in aid or execution upon a judgment entered by a court of the United States if "the judgment is based on an order confirming an arbitral award rendered against the foreign state . . .").

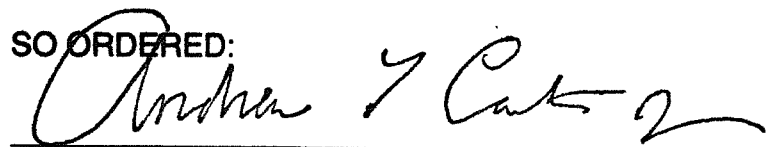
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maloney@sewkis.com
weitman@sewkis.com
millerl@sewkis.com

*Counsel for Commodities & Minerals
Enterprise Ltd.*

Application **GRANTED**. Parties are ordered to appear for a conference on December 12, 2018 at 2:30 p.m. in Courtroom 1306 at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007.

SO ORDERED:

A handwritten signature in black ink, appearing to read "Andrew L. Carter, Jr.", written over a horizontal line.

HON. ANDREW L. CARTER, JR.
UNITED STATES DISTRICT COURT

11/19/18